



MEMORANDUM

DATE: May 11, 2018

TO: Members of the Access to Mental Health Services Study

FROM: Emily Kerr, Legislative Attorney

RE: Mental Health Legislation: 2008 - 2018

During the past ten years, the Legislature has addressed several aspects of mental health-related issues, from authority to impose involuntary commitment under certain circumstances, to the costs incurred by counties for mental health services, to mandatory training for mental health professionals regarding emergency commitment. This memo provides an overview of specific legislation enacted since 2008.

1. Involuntary Commitment and Treatment

Qualified mental health professionals are required since 2012 to complete training and an examination provided by the Department of Social Services (DSS) on the emergency commitment process.¹ Prior to this enactment, mental health professionals were required to obtain an “endorsement” from DSS.² The enactment also provided authority to the Board of Mental Illness to authorize certain treatment, including electroconvulsive therapy, for persons with mental illness who are involuntarily committed, not to last longer than one year or until the person is capable of refusing treatment.³ If ordered by a physician, a person in an emergency may be administered certain treatments to “prevent significant deterioration of the person’s severe mental illness.”⁴ The treatment was originally authorized for only 10 days, but in 2014 authority was provided to extend the treatment for an additional 10 days upon petition to the circuit court or the Board of Mental Illness.⁵

For any minor who was admitted by a parent for inpatient treatment, in 2013 the Legislature provided a means by which a county board of mental illness may, pursuant to petition by certain mental health professionals, overrule the parent’s intention to terminate the minor’s inpatient treatment.⁶ The enactment also provided authority,

¹ 2012 S.D. SESS. LAWS, Ch. 149 (SB 15). Other provisions of the bill regarding treatment for substance abuse in outpatient clinics fall outside the scope of this memorandum.

² See *id.*

³ See *id.*

⁴ See *id.*

⁵ 2014 S.D. SESS. LAWS, Ch. 130 (HB 1198).

⁶ 2013 S.D. SESS. LAWS, Ch. 122 (HB 1020).

subject to judicial review, for a minor who is receiving inpatient treatment to refuse treatment for the minor's serious emotional disturbance.⁷

Starting in 2014, the name of any person whom the Board of Mental Illness orders to involuntary commitment as being a danger to self or others is reported to the National Instant Criminal Background Check System (NICS) for purposes of prohibiting the person from purchasing a firearm.⁸

2. Law Enforcement Authority and the Courts

In 2010, the Legislature first authorized law enforcement officers who believe a person requires emergency nonmedical intervention to transfer the person in lieu of an arrest to the supervision of a member of a mobile crisis team or crisis intervention team, who may then direct the law enforcement officer to transport the person to a regional facility for a mental illness examination.⁹ The law enforcement officer and crisis intervention team member were afforded immunity from civil liability for "good faith" actions.¹⁰ This authorization and civil liability protection were expanded to include qualified mental health professionals in 2012.¹¹ In 2017, law enforcement officers were granted authority to initiate a mental illness hold for domestic abuse perpetrators believed to have a severe mental illness that makes the person an imminent danger to self or others.¹²

If a formal request is submitted to an inpatient facility, law enforcement as of 2016 may receive notice of the pending discharge for any person who has been involuntarily committed.¹³ Also in 2016, the list of professionals who may examine a defendant pleading guilty but mentally ill was expanded from just licensed psychiatrists to court-approved licensed psychologists as well.¹⁴

In 2017, the Legislature required the South Dakota Sheriffs' Association to develop a "jail mental health screening pilot program" for purposes of developing a program to be implemented statewide.¹⁵ Additionally, the DSS created a crisis services grant program for any locality that established new or expanded existing crisis response services.¹⁶ The bill also required each state's attorney, deputy state's attorney, and court-appointed defense attorney to receive training on available mental health services.¹⁷ Defendants who did not reasonably assure reappearance upon release could be required to complete a mental health assessment prior to being released.¹⁸ The enactment included special training for officers within any state prison or jail and any person who supervises probationers on recognizing mental health problems.¹⁹

⁷ See *id.* The term "serious emotional disturbance" is applicable only to minors who fit the definition, which is located in § 27A-15-1.1.

⁸ 2014 S.D. SESS. LAWS, Ch. 113 (HB 1229).

⁹ 2010 S.D. SESS. LAWS, Ch. 142 (HB 1132).

¹⁰ See *id.*

¹¹ 2012 S.D. SESS. LAWS, Ch. 122 (HB 1020).

¹² 2017 S.D. SESS. LAWS, Ch. 113 (HB 1100).

¹³ 2016 S.D. SESS. LAWS, Ch. 147 (SB 142).

¹⁴ 2016 S.D. SESS. LAWS, Ch. 135 (SB 79).

¹⁵ 2017 S.D. SESS. LAWS, Ch. 109 (HB 1183).

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.* The enactment also created an oversight council to monitor and report performance and outcome measures required to be reported under the enactment's provisions, and to make recommendations to expand access to mental health services for criminal justice populations.

3. Admission Fees and Monthly Minimum Fees

In 2010, the Legislature made permanent the \$600 admission fee and the pro rata minimum monthly fee charged to a county for each patient who is a resident of that county and who was admitted for care in the Human Services Center.²⁰ The admission fee and pro rata minimum monthly fee had been scheduled to sunset on December 31, 2010.²¹ In 2017, the DSS and the Department of Human Services were required to establish a rate-setting methodology for services delivered by community-based health and human services providers, including community mental health centers.²²

4. Bureau Reorganization and Licensure

The Mental Health Division of the DSS was renamed the Division of Behavioral Health in 2016.²³ The Division took on the responsibilities not just previously provided to the Mental Health Division but also the previous Division of Alcohol and Drug Abuse.²⁴

During the 2018 Legislative Session, and effective immediately upon the Governor's signature, the Legislature authorized the Board of Examiners for Counselors and Marriage and Family Therapists to issue a license to practice mental health counseling to certain qualified applicants who are licensed in another state.²⁵

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²⁰ 2010 S.D. SESS. LAWS, Ch. 143 (SB 39).

²¹ *See id.*

²² 2017 S.D. SESS. LAWS, Ch. 122 (SB 147).

²³ 2016 S.D. SESS. LAWS, Ch. 15 (SB 20).

²⁴ *See id.*

²⁵ 2018 S.D. SESS. LAWS, Ch. 238 (HB 1040).